

Marine Corps Exchange 0231 Marine Corps Exchange Service, 12/13/95, RF272-67557, RF272-70220

The DOE issued a Decision and Order denying refunds to Marine Corps Exchange 0231 and Marine Corps Exchange Service, (collectively "the Exchange") in the crude oil overcharge refund proceeding conducted under 10 C.F.R. Part 205, Subpart V. The Exchange applied for a refund for petroleum products it sold through retail gasoline stations on Marine Corps bases. In denying a refund, the DOE

found that the Exchange was retailer of these products and was required to submit a detailed demonstration of injury from crude oil overcharges. Instead of submitting such a demonstration, the Exchange argued that (1) It suffered reduced profits because of the overcharges; (2) its prices were set lower than other gasoline retail outlets; and (3) the Exchange is similar to a cooperative because the refund would be shared with local Marine Corps recreation and morale support funds. The DOE rejected all three

arguments based on its findings in earlier cases. Since the Exchange failed to submit a demonstration of injury, the DOE denied its Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Ref Dist	RB272-00060	12/13/95
Crude Oil Supplemental Refund Distribution	RB272-00054	12/13/95
Crude Oil Supplemental Refund Distribution	RB272-00035	12/13/95
E & R Trucking Co., Inc. et al	RF272-77434	12/13/95
Electric Energy, Inc	RF272-65878	12/13/95
Enron Corp./Geiger Bottled Gas Company	RF340-0170	12/13/95
Southern States Utilities, Inc	RF340-0202
Flasher Farmers Union Oil Co.	RR272-0199	12/13/95
George R. Brown Lease Service	RF272-78648	12/13/95
Phoenix Industries, Inc. et al	RF272-92015	12/11/95
Ranger Fuel Corporation	RF272-77226	12/13/95
Jewell Ridge Coal Corporation	RF272-77227
Virginia Chemicals, Inc	RF272-77387	12/13/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Birchwood Air Service	RF272-98027
On Site Fuel Oil Co., Inc.	RF300-16898
State of Wyoming	RF272-95217

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Notice of Issuance of Decisions and Orders During the Week of January 22 Through January 26, 1996

During the week of January 22 through January 26, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of

Hearings and Appeals World Wide Web site at <http://www.o.ha.doe.gov>.

Dated: August 28, 1996.
Thomas O. Mann,
Acting Director, Office of Hearings and Appeals.

Appeals

David R. McMurdo, 1/25/96, VFA-0109

David R. McMurdo (Appellant) filed an Appeal under the Privacy Act of a December 7, 1995 determination issued to him by the DOE's Richland Operations Office (Richland). The Appellant, who had been employed by a sub-contractor on the Hanford Reservation, had requested all medical and personnel records held by Richland concerning him. On Appeal, the Appellant contended that the DOE's search for responsive documents was inadequate. After considering his Appeal, the DOE found that Richland's search for responsive documents was adequate. Accordingly, the Appeal was denied.

Nathaniel Hendricks, 1/26/96, VFA-0106

Nathaniel Hendricks (Appellant) filed an Appeal from a determination issued by the DOE's Office of Human Radiation Experiments (OHRE) in response to a request under the Freedom of Information Act (FOIA). The request related to the alleged release of radiation in the Chicago area in the early 1940s. The Chicago Operations Office (COO) and the OHRE conducted searches for responsive documents. The Appellant did not appeal the COO's determination, but appealed the OHRE determination, claiming that the OHRE had not performed an adequate search for responsive documents. In the interests of a factually complete determination, the DOE investigated the searches of the COO and the OHRE. With respect to the COO search, conducted by its contractor, Argonne National Laboratory (Argonne), the DOE discovered that Argonne possessed 5,000 notebooks of possibly responsive material, which had been determined likely to be radioactive. According to Argonne, the notebooks had never been examined due to the high costs of conducting the

necessary radioactivity study and examination of such a large quantity of material. In its Decision, the DOE determined that it was unreasonable to require the COO to review the notebooks and concluded that the COO's search was adequate. However, the DOE concluded that the OHRE's search of the two databases available to it was inadequate because of the failure to search for certain prominent terms used in the Appellant's request. Accordingly, the DOE granted the Appeal and remanded the matter to the OHRE for further action.

Terrence Willingham, 1/22/96, VFA-0100

Terrence Willingham (Appellant) filed an Appeal from a determination issued to him by the DOE's Office of the Executive Secretariat (ES). The Appellant asserted that the ES failed to conduct an adequate search for documents responsive to two Freedom of Information Act (FOIA) requests. The Appellant requested copies of all documents containing information pertaining to various job announcements concerning the Director and Deputy Director of the DOE's Office of Civil Rights. In its determination letter, the ES produced 42 documents. The Appellant asserted that the ES

conducted an inadequate search. The DOE found that the ES conducted an adequate search with regard to almost all of categories of information. The DOE further found, however, that the search concerning several of the requested categories of information was inadequate. Finally, the DOE found that a portion of one of the documents provided to the Appellant, minutes of a meeting (Minutes Document), had been deleted without providing the Appellant a statement of the reasons for the withholding. Consequently, the DOE remanded the matter for a (i) further search for responsive documents and (ii) a determination concerning whether the withheld portion of the Minutes Document was releasable.

Williams & Trine, P.C., 1/25/96, VFA-0108

William & Trine, P.C. (Appellant) filed an Appeal from denials issued by the Ohio Field Office (DOE/OH) and the FOIA/Privacy Act Division (DOE/HQ) of a Request of Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the requested information, documentation of the shipment of hazardous or radioactive material from any DOE facility to a facility of the

Appellant's client, Cotter Corporation in Colorado, did not exist because no shipments of such material were ever made. Accordingly, the Appeal was denied.

Personnel Security Hearing

Oak Ridge Operations Office, 1/25/96, VSO-0057

An OHA Hearing Officer issued an opinion concerning the eligibility for restoration of access authorization of an individual who untruthfully stated on a Questionnaire for Sensitive Positions and in two Personnel Security Interviews that he had a college degree. The Hearing Officer found that due to this falsification the individual was untrustworthy. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Easy Times ARCO	RF304-13145	01/22/96
ARCO Mini Market	RF304-15479
Crude Oil Supple. Refund Dist	RB272-62	01/22/96
Crude Oil Supple. Refund Dist	RB272-64	01/22/96
Crude Oil Supple. Refund Dist	RB272-63	01/22/96
Crude Oil Supple. Refund Dist	RB272-42	01/22/96
Crude Oil Supplemental Refund Dist	RB272-00033	01/24/96
Elmer Hendrix, Jr., et al	RK272-00110	01/24/96
Libby Rink, et al	RK272-01616	01/22/96
Northern Ohio Trucking, et al	RF272-85025	01/22/96
St. Patrick's Church, et al	RF272-99107	01/22/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Americair, Inc	RF272-97954
Amerijet International	RF272-97948
Aviation Associates, Inc	RF272-98721
Boston and Maine Corporation	RF272-97248
Executive Airlines	RF272-97988
Flight International, Inc	RF272-97992
I.E. Miller & Company	RF272-98429
Long Island Airlines	RF272-97989
Maine Central Railroad	RF272-97251
Maxair, Inc	RF272-97990
Portland Terminal Company	RF272-97249
Springfield Terminal Railway	RF272-97250
Tanana Air Service	RF272-97994
Taylor's ARCO	RF304-14251
Wellen Oil and Chemical	RF300-18517